

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 R.D. and C.D.,

7 Plaintiffs,

8 v.

9 BOY SCOUTS OF AMERICA, a
10 congressionally chartered corporation,
11 authorized to do business in Washington;
12 et al.,

13 Defendants.

CASE NO. C10-1006BHS

ORDER OF RECUSAL

14 This matter comes before the Court on Plaintiffs' motion for the undersigned's
15 recusal in this matter. Also before the Court is the parties' stipulation for modification of
16 pretrial deadlines. Dkt. 67. The Court has considered the pleadings filed in support of and
17 in opposition to the motion and the remainder of the file and hereby grants the motion for
18 recusal and denies as moot the parties' stipulated motion for altering pretrial deadlines for
19 the reasons discussed herein.

20 **I. DISCUSSION**

21 On June 28, 2011 the Court held a telephonic hearing with all parties to discuss
22 matters before the Court. Dkt. 61 (minute entry). During that hearing the Court advised
23 the parties that the undersigned previously served as a member of an advisory board to
24 the Tumwater Boy Scout Counsel, which is one of the predecessors to Defendant Pacific
25 Harbors Council. This service lasted approximately one year and took place around thirty
26 years ago. Based on this disclosure, the Court informed the parties that any concern they
27 might have over the undersigned's service to the Boy Scouts (i.e., need for recusal)
28 should be addressed by motion.

1 On July 15, 2011, Plaintiffs moved the Court for the undersigned's recusal in this
2 matter. On July 26, 2011, (1) Defendant Rainier Council ("Rainier") responded in
3 opposition to Plaintiffs' motion for recusal; (2) Defendant Corporation of the President of
4 the Church of Jesus Christ of Latter-Day Saints and Successors responded but did not
5 oppose Plaintiffs' motion for recusal; and (3) Defendant Boy Scouts of America
6 responded in opposition to Plaintiffs' motion for recusal by adopting and incorporating
7 Rainier's brief in opposition. Dkts. 73, 75, 76.


8 "Any justice, judge, or magistrate judge of the United States shall disqualify
9 himself in any proceeding in which his impartiality might reasonably be questioned." 28
10 U.S.C. § 455. "The trial judge must recuse himself when there is the appearance of bias,
11 regardless of whether there is actual bias." *Bryce v. Episcopal Church of Colo.*, 289 F.3d
12 648, 659 (10th Cir. 2002). The decision whether to recuse from a case is committed to the
13 sound discretion of the Court. *See Weatherhead v. Globe Int'l, Inc.*, 832 F.2d 1226, 1227
14 (10th Cir. 1987). But if the decision is a close one, the judge should recuse. *Bryce*, 289
15 F.3d at 659.

16 Because the Court finds the question of whether the undersigned's impartiality
17 might reasonably be questioned, the undersigned should recuse. The Court reaches this
18 conclusion based on the record before the Court and the undersigned's prior service to the
19 Tumwater Boy Scout Council, a predecessor to the Pacific Harbors Council.

20 II. ORDER

21 Therefore, the undersigned hereby **GRANTS** Plaintiffs' motion for recusal (Dkt.
22 69) and **DENIES as moot** the parties' stipulation for altering pretrial deadlines (Dkt. 67).

23 DATED this 8th day of August, 2011.

24
25
26 
27 BENJAMIN H. SETTLE
28 United States District Judge